



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of January 27, 2009
Approved February 24, 2009

Members present: Chairman Doug Andrew, Members Jack Baker, John (Jack) Downing and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew called the meeting to order at 7:35 p.m. then called the roll.

Mr. Andrew appointed Mrs. Bolduc as an alternate to the Board, taking the place of absent Member Scott Boisvert.

MINUTES

Mr. Downing made the motion to accept the minutes of the December 30, 2008 meeting as written. Motion seconded by Mr. Baker with unanimous favorable vote.

Case # 08-006
Janzegers, Remi & Katherine
MAP 2 LOT 126

Present: Owners Remi and Katherine Janzegers

Mr. Andrew opened this Public Hearing at 7:35 p.m. and stated that this is a continuation of the December 30, 2008 Public Hearing and the January 24, 2009 site visit. The applicants are seeking an Area Variance from Article XI Section E-1 of the Fremont Zoning Ordinance to allow a second dwelling unit on their property in the form of a living unit in the space above an attached residential garage without the proper acreage as set forth in the Ordinance.

Mr. Andrew stated that there is not a full five Member Board present and related to the applicants that they have the option of waiting for the presence of a full Board for any decisions. Mr. & Mrs. Janzegers opted to move forward with the four members present.

Mr. Andrew reported that on January 24, 2009 he and Mr. Downing met with the owners at the site and viewed the property and the location of the proposed second living unit.

Mr. Andrew explained the purpose of the Board and the procedure for a Variance including the five conditions which must be met in order for a Variance to be granted. He then read Article XI Section E-1 of the Fremont Zoning Regulations.

The Board reviewed the same plan submitted at the December 30, 2008 portion of this Public Hearing, which showed the entire 2.536 acre parcel with the locations of all abutting properties. The subject property, Map 2 Lot 126, contains 2.5436 acres and is in the Aquifer Protection District so the minimum lot size for a second residential unit is 3.83 acres (3 acres plus 18,000sf per unit). The property is mixed use, business and residential, and the buildings include two small storage sheds, a 3,250 sf auto body & repair shop (Action Auto), a 1,280 sf mobile home, a 16' x 34' single story addition to the east side of the mobile home and a 32' x 40' two story addition to the north side of the mobile home which is a garage with a 2-story 16' x 28' sunroom/deck addition to this portion of the building.

With little more discussion, the five conditions of an Area Variance were addressed by the applicant and voted by the Board. The applicant's answers as submitted with the application are shown in italics. Mr. Andrew read the five conditions as follows:

1. The proposed use would not diminish surrounding property values because: *This property is located in the FUR-Flexible Use zoning district which includes commercial properties, farms and residences. If anything, value will be added to the parcel by allowing the currently single family home to become a two unit, while keeping the outside appearance of a single family home.*

Board vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational 4-0.

2. Granting the variance would not be contrary to the public interest because: *The property already has a commercial business and a single-family home located upon it. There will be no additional external expansion involved; all expansion will be done within the existing footprint of the home. There will be a total of two bedrooms for the entire building, therefore limiting the impact on the property. The building was in existence before the area requirement was increased in 2005.*

Board vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational 4-0.

3. Denial of the variance would result in unnecessary hardship to the owner because:

- a. the following special conditions of the property make an Area Variance necessary in order to allow the development as designed: *The existing non-conforming lot of record is grandfathered for the minimum lot size requirement and no external expansion of the existing*

buildings will be done. The existing buildings were built before the area requirements for a two-unit were increased in 2005.

Mrs. Janzegers added that the size of the property poses a hardship for their proposed use .

Discussion:

Mrs. Bolduc stated that, for the sake of clarification, she feels this property is not considered grandfathered for two dwelling units. Any grandfathered use applies to the minimum use only, which is single family. She noted that prior to 2005 when the Aquifer Protection District was expanded to include this property, a minimum of 2 acres plus 18,000 sf per unit (2.55 acres) was required so this property would have fallen slightly short of the requirement and would have needed a Variance even then. A property located in the Aquifer Protection District needs a minimum of 3 acres so the calculations come out to 3.83 acres needed.

Board vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board collectively agreed with the applicant's rational 4-0.

b. the benefit sought cannot be achieved by some other method reasonably feasible to pursue, other than an area variance; There is not a way to add to the existing lot of record. In order to provide security when we are away out-of-state part of every year, a family member or employee would need to live on the property. Our property has been vandalized and broken into in the past and it would afford us peace of mind when we are away.

Discussion:

The Board agreed that the consideration relative to a Variance should only be with the property as in the first sentence of the owners answer and not with the applicant wish to provide security.

Board vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational 4-0.

4. Granting the variance would do substantial justice because: *We could have a one-bedroom interior apartment for family or an employee; there is no additional external construction and no infringement of the current property size or boundaries. Having somebody living on the property when we are away will help protect and secure our property and business.*

Discussion:

Again, the Board agreed that the consideration relative to a Variance should only be with the property as in the first sentence of the owners answer and not with the applicant wish to

provide security. Any loss to the individual that is not outweighed by a gain to the general public is an injustice.

Board vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational 4-0.

5. The use is not contrary to the spirit of the ordinance; *This is a mixed use zoning district allowing both commercial and residential use. There will be no expansion of the existing footprints. We would like to add a kitchen which changes the property from a one-family to a two-family unit. We have a total of two bedrooms for the entire property, which limits the number of people able to occupy the house and the impact on the property.*

Board vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational 4-0.

With no further discussion by the Board, Mrs. Bolduc made the motion that, based on the information and plan presented and as the result of the Boards vote on the five conditions of an Area Variance, the Fremont Zoning Board of Adjustment grant an Area Variance from the terms of Article XI Section E-1 of the Town of Fremont Zoning Ordinance to Remi and Katherine Janzegers for property located at 932 Main Street, Fremont, New Hampshire, Map 2 Lot 126 to allow a second dwelling unit on their property in the form of a single bedroom living unit in the space above the existing attached residential garage, without the required acreage with the following condition:

1. That the number of bedrooms in each living unit be limited to one (1); for a total of no more than two (2) bedrooms on the property, as proposed by the owners.

Motion seconded by Mr. Downing with unanimous favorable vote of 4-0.

The applicants were instructed that there is a thirty (30) day appeal period and that this decision will be recorded at the Rockingham Registrar of Deeds. The applicant agreed to remit payment for all recording fees.

At 8:05 pm Mr. Downing made the motion to close this Public Hearing.

Motion seconded by Mr. Baker with unanimous favorable vote.

DISCUSSION

There was a general conversation relative to the purpose of the Board as described in the NH Office of Energy and Planning Board of Adjustment Handbook; to hear appeals from any order, requirement, decision or determination made by an administrative official and administer special provisions in the

ZBA Meeting Minutes 01-27-09

ordinance dealing with variances, special exceptions and equitable waivers of dimensional requirement.

The Board used excerpts from the NH OEP Handbook and the NH RSA's to discuss different scenarios of Area and Use Variances, and the 5 conditions. They also briefly discussed Special Exceptions.

ORDINANCES

There was a general discussion relative to Article IV Sections, 1, 2, 3 and 4, which deals with lot size, setback and frontage. Mrs. Bolduc said that while researching something unrelated she found that, according to the ZBA minutes of March 30, 1978 Richard Stanley, who was a member of the Planning Board at the time Article IV Sections 1, 2, 3, and 4 were written, said that "The intent of the Ordinance at the time it was written was to limit the conversion of private homes without adequate land into apartments, particularly in the center of Town where congestion would be a problem". Mrs. Bolduc stated that it is important to know what the original intent of an ordinance was.

CORRESPONDENCE

There was no incoming correspondence.

Next meeting: scheduled for February 24, 2009.

At 9:20 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
